STATE OF MICHIGAN

COURT OF APPEALS

LORI RICHTER,

Plaintiff-Appellant,

v

DR. GERALD TURLO,

Defendant,

and

ALAN H. ROSENBAUM, M.D., and ALAN H. ROSENBAUM, M.D., P.C.

Defendants-Appellees.

UNPUBLISHED
October 1, 1999

No. 210922
Wayne Circuit Court
LC No. 96-635040 NZ

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting the motion of defendants Alan H. Rosenbaum, M.D., and Alan H. Rosenbaum, M.D., P.C., for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

Plaintiff contends that the trial court erred in relying on MCL 330.1946; MSA 14.800(946). MCL 330.1946; MSA 14.800(946) provides in pertinent part:

> (1) If a patient communicates to a mental health professional who is treating the patient a threat of physical violence against a reasonably identifiable third person and the recipient has the apparent intent and ability to carry out that threat in the foreseeable future, the mental health professional has a duty to take actions as prescribed in subsection (2). Except as provided in this section, a mental health professional does not have a duty to warn a third person of a threat as described in this subsection or to protect the third person.

This Court has already held that, pursuant to this statutory provision, the duty a mental health professional owes to third persons is limited to a duty to warn in those situations where a patient communicates a threat and the object of the threat is reasonably identifiable. See *Swan v Wedgwood Christian Youth & Family Services, Inc*, 230 Mich App 190, 198; 583 NW2d 719 (1998).

Plaintiff argues that MCL 330.1946; MSA 14.800(946) does not apply to medical malpractice cases or a hospital setting. However, the statute specifically limits the duty a mental health professional owes to third persons to the duty to warn identifiable third parties *"as provided in this section*." *Swan*, *supra* at 199. Thus, the duty a mental health professional owes to third persons does not vary depending upon the cause of action.

Even if MCL 330.1946; MSA 14.800(946) is applicable, plaintiff maintains that she presented sufficient evidence to establish a prima facie case. We disagree. Plaintiff has not submitted any evidence that the patient communicated a threat against her to Dr. Rosenbaum. In her deposition, plaintiff admitted that she does not know what the patient communicated to Dr. Rosenbaum with regard to his intent to harm the staff or lack thereof. Accordingly, the trial court properly granted defendants' motion for summary disposition.

Plaintiff contends that the patient does not have to communicate a threat against a third person directly to a psychiatrist as long as the psychiatrist was aware of the threat from other sources. However, plaintiff's argument ignores the plain language of MCL 330.1946(1); MSA 14.800(946)(1), which provides that a mental health professional has a duty to take action "if a patient *communicates to a mental health professional*" a threat of physical violence against a third person. Plaintiff complains that it is "ludicrous" to limit the duty of a mental health professional to situations where a patient communicates a threat against a third person to him when the mental health professional is aware of the threats from other sources. However, this result is dictated by the plain language of the statute, and plaintiff must address any arguments that the statute is unwise or results in bad policy to the Legislature. See *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 613; 575 NW2d 751 (1998).

In addition, plaintiff asserts that defendants' motion for summary disposition should have been denied because Dr. Rosenbaum is "hid[ing] behind the physician-patient privilege." Again, we disagree. The physician-patient privilege is intended to protect the confidential nature of the physician-patient relationship and to encourage patients to make full disclosure of their symptoms and conditions. *Landelius v Sackellares*, 453 Mich 470, 474; 556 NW2d 472 (1996). The right to assert the privilege is personal to the patient. *Dierickx v Cottage Hosp Corp*, 152 Mich App 162, 167; 393

NW2d 564 (1986). In the instant case, the patient has not waived his physician-patient privilege, and the record of his conversation with Dr. Rosenbaum is therefore not subject to discovery. The force of the statutory privilege outweighs plaintiff's concern over defendants' alleged use of it to gain a strategic advantage in the current litigation. See *id.* at 169; see also *Popp v Crittenton Hosp*, 181 Mich App 662, 665; 449 NW2d 678 (1989).

Finally, contrary to plaintiff's argument, MCR 2.314(B)(2) is not applicable here because Dr. Rosenbaum has not asserted the physician-patient privilege with regard to his own medical history. Rather, he invoked the privilege with regard to the medical records of the patient, who has not waived the privilege and who is not a party to this lawsuit.

Affirmed.

/s/ Jeffrey G. Collins
/s/ David H. Sawyer
/s/ Mark J. Cavanagh